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CANADA

ENBRIDGE'S LINE 5: AN INTERIM REPORT

**Report of the Special Committee on the Economic
Relationship between Canada and the United States**

Raj Saini, Chair

**APRIL 2021
43rd PARLIAMENT, 2nd SESSION**

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**Raj Saini
Chair**

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE SPECIAL COMMITTEE ON THE ECONOMIC RELATIONSHIP BETWEEN CANADA AND THE UNITED STATES

has the honour to present its

FIRST REPORT

Pursuant to the order of reference of Tuesday, February 16, 2021, the committee has studied the economic relationship between Canada and the United States and has agreed to report the following:

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LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Government of Canada encourage Enbridge Inc. and the State of Michigan to resolve the dispute between them concerning the Line 5 pipeline through a negotiated or mediated settlement. The Government should convey to relevant parties that such a settlement is in their interests, and would benefit Canadians and Americans more generally..... 11

Recommendation 2

That the Government of Canada continue to engage with relevant stakeholders in both Canada and the United States concerning the Line 5 pipeline. In its engagement with U.S. decisionmakers, the Government should emphasize the importance of Line 5's continued operation for secure energy supplies, jobs and economic activity in both countries. Regarding domestic engagement, the Government should pursue an inclusive approach that gathers input from a broad range of organizations and individuals, including Indigenous Peoples. 12

Recommendation 3

That, based on the information currently available to the Special Committee, the Government of Canada file an *amicus curiae* brief if a negotiated or mediated settlement permitting the continued operation of Line 5 is not reached between Enbridge, Inc. and the State of Michigan prior to the date by which such briefs must be filed. The brief should set out Canada's legal position with respect to the operation of pipelines that cross international boundaries, including but not limited to advising the court of any rights set out in bilateral or multilateral treaties or agreements, including the *1977 Agreement between the Government Of Canada and the Government of the United States Of America Concerning Transit Pipelines*. 12

Recommendations 4

That the Prime Minister of Canada and his Ministers pursue frequent and direct dialogue on the issue of Line 5 with the U.S. President and his administration, in an attempt to resolve this dispute diplomatically as soon as possible..... 12

Recommendation 5

That, in light of the external threat posed to Line 5's continued operation, the Government of Canada should evaluate other possible vulnerabilities to Canada's critical energy infrastructure and supply chains, and develop contingency plans to ensure that Canadian interests are protected in the event of disruptions..... 12

Recommendation 6

That the Government of Canada work with industry to develop contingency plans designed to ensure that Canadian oil and gas products will continue to be delivered in a timely fashion to the Canadian refineries and industries that rely on the Line 5 pipeline should an interruption to Line 5's service occur. 12

Recommendation 7

That members of the Parliament of Canada and other Canadian elected officials engage with members of the U.S. Congress and other U.S. elected officials in order to advise them of the importance to both Canada and the United States of the continued operation of Line 5 and that the Canada–United States Inter-Parliamentary Group be involved in such efforts..... 13



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INTRODUCTION

On 16 February 2021, the House of Commons adopted a motion creating the Special Committee on the Economic Relationship between Canada and the United States (the Special Committee). Paragraph k of the motion instructs the Special Committee to:

present an interim report, concerning an analysis of the importance of the Enbridge Line 5 pipeline to both countries' economies and the consequences of its possible closure, including the labour market implications caused by layoffs of unionized and other workers, together with recommendations to address and safeguard Canadian interests, no later than Thursday, April 15, 2021.

Enbridge Inc.'s (Enbridge's) Line 5 pipeline (Line 5) has been in use since 1953, and transports up to 540,000 barrels of light crude oil and natural gas liquids per day. These petroleum products are refined into propane, gasoline, jet fuel and other products at refineries and factories in Ontario and Quebec, as well as in Indiana, Michigan, Ohio and Pennsylvania. Line 5 runs eastward from Superior, Wisconsin to Sarnia, Ontario and crosses the Straits of Mackinac (the Straits) – a 50-kilometre channel that connects Lake Michigan with Lake Huron – in Michigan.

On 13 November 2020, citing environmental concerns, Michigan's Governor issued a notice revoking and terminating the easement that authorizes Enbridge to operate a dual pipeline across the Straits, and gave Enbridge 180 days – until 12 May 2021 – to shut down this section of Line 5. Both Enbridge and the State of Michigan (Michigan) have initiated litigation, and Enbridge has stated publicly that it intends to continue operation of the pipeline after the 12 May 2021 deadline. At the same time, the Great Lakes Tunnel Project, which would replace the existing pipeline in the Straits with a new pipeline housed in a tunnel running under the Straits, is currently in the process of securing the necessary regulatory approvals at the U.S. state and federal levels.

The possible shutdown of Line 5 has raised concerns in Canada about the security of energy supplies, job losses and other negative effects. Line 5 contributes to the Canada-U.S. economic relationship, creates opportunities for cross-border trade in energy products, and helps to ensure that consumers in both countries can access these products reliably.

The Special Committee held five meetings between 2 March 2021 and 30 March 2021 during which 18 witnesses spoke about Line 5. The Special Committee heard from:



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Canada's Minister of Natural Resources; Canada's Ambassador to the United States; federal, provincial and municipal officials, including ministers; Enbridge; trade associations; organized labour groups; and an academic. Michigan's Department of Environment, Great Lakes, and Energy, Department of Transport, and Public Service Commission, as well as the Bad River Band of Lake Superior Chippewa, were invited to appear before the Special Committee, but were either unavailable or declined.

This interim report summarizes witnesses' comments about Line 5 and makes seven recommendations to the Government of Canada. Witnesses' views about other topics will be considered in the context of future Special Committee reports on the Canada–U.S. economic relationship. In particular, this interim report considers the prospects for Line 5 continuing to operate, some possible implications of its shutdown, and past, current and future actions by the Government of Canada concerning Line 5. It also provides the Special Committee's conclusions and recommendations.

PROSPECTS FOR CONTINUED OPERATION OF LINE 5

Witnesses identified several means by which the Line 5 dispute between Enbridge and Michigan could be resolved: negotiation or mediation; ongoing litigation; U.S. federal intervention; or timely completion of the Great Lakes Tunnel Project. The vast majority of witnesses emphasized that Line 5 should continue to operate.

Enbridge stated its preference for a negotiated or mediated settlement with Michigan prior to the 12 May 2021 deadline for shutting down Line 5. In expressing a similar preference, Canada's Minister of Natural Resources and Canada's Ambassador to the United States described recent court-ordered mediation as a positive development that could resolve the dispute before the deadline. The Mayor of Sarnia and the Sarnia Construction Association also preferred a negotiated settlement to the dispute, rather than resolution through litigation.

Alberta's Minister of Energy argued that, if mediation is unsuccessful, continued operation of Line 5 could occur through litigation of the dispute. In that regard, Enbridge asserted that Michigan would need a court injunction to stop it from operating Line 5 after the 12 May 2021 deadline, an outcome that it does not expect to occur. Enbridge noted that the first hearing of the U.S. federal litigation is scheduled for 12 May 2021. In Enbridge's view, this litigation is likely to be reviewed by "multiple levels of U.S. federal court" and will not be resolved for "many years." Ontario's Associate Minister of Energy, as well as Local 663 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, expressed concern

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about a U.S. court being the decisionmaker regarding an issue of such importance to Canada.

Saskatchewan's Minister of Energy and Resources, the Mayor of Sarnia and the Sarnia Construction Association, as well as Local 663 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, saw the U.S. federal government as potentially having a role to play in resolving the Line 5 dispute. Enbridge underscored that, while the Trump administration had publicly supported Line 5, the Biden administration has – to date – not stated its position. Global Affairs Canada emphasized that the dispute is a "state-to-state issue" between the Government of Canada and the U.S. federal government, with Enbridge and Canada's Building Trades Unions stressing that Line 5 is regulated by the U.S. federal Pipeline and Hazardous Materials Safety Administration.

Noting the Michigan Governor's support for the Great Lakes Tunnel Project, Enbridge characterized the project as "the answer" that, when completed, would eliminate the environmental risk motivating Michigan's objections to Line 5. Global Affairs Canada made similar comments, framing the dispute between Enbridge and Michigan as concerning whether Line 5 should be shut down until the tunnel is completed, currently scheduled for 2024.

Canada's Minister of Natural Resources remarked on the impacts of a possible shutdown of Line 5 and described the pipeline's continued operation as "non-negotiable." The Canadian American Business Council said that Line 5 is an "essential service," and predicted that a shutdown would have "pretty dramatic" results. Alberta's Minister of Energy cautioned that a shutdown would "devastate Alberta."

SOME POSSIBLE IMPLICATIONS OF A SHUTDOWN OF LINE 5

In considering the potential effects of a possible shutdown of Line 5, witnesses focused on secure energy supplies, transportation adjustments and limitations, shortages of energy products, price changes, job losses, and Canada's relations with Michigan and some other U.S. states.

Canada's Minister of Natural Resources, the Canadian Chamber of Commerce and the Canadian Propane Association maintained that Line 5 contributes to secure energy supplies for Canada and/or the United States. Canada's Minister of Natural Resources stated that Line 5 supplies four refineries in Ontario and two in Quebec. Moreover, the Canadian Chamber of Commerce said that central Canada's supplies of gasoline, heating fuel and jet fuel depend on Line 5, while Canada's Minister of Natural Resources and



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[Enbridge](#) observed that Line 5 supplies 55% of Michigan's propane needs. The [Canadian Propane Association](#) highlighted that Line 5 is the only pipeline that supplies propane to Southern Ontario. According to [Saskatchewan's Minister of Energy and Resources](#), the Enbridge Mainline – of which Line 5 is a part – is the “only real pipeline egress” for that province's energy producers.

The [Canadian American Business Council](#), [Canada's Building Trades Unions](#) and the [Canadian Propane Association](#) commented that a shutdown of Line 5 would increase the number of trucks, railcars and/or barges that carry energy products through certain parts of Canada and the United States. [Natural Resources Canada](#) asserted that, in the event of a shutdown, “approximately 2,100 tanker trucks per day leaving Superior and heading east across Michigan, and roughly 800 railcars travelling on Michigan's rails,” would be required to transport the products that are moved by Line 5. In the view of the [Canadian Chamber of Commerce](#), “up to 2,000 tanker trucks or 800 railcars a day would be needed to absorb the displaced product.” [Canada's Building Trades Unions](#) provided an estimate of “upwards of 2,000 trucks a day or 800 railcars,” while [Enbridge](#) mentioned “15,000 dedicated trucks per day” or “800 extra railcars a day.”

[Alberta's Minister of Energy](#) noted that, if Line 5 shuts down, refineries in Montreal would have a number of options for sourcing their energy inputs: rail or truck from Western Canada; tankers from various countries, including members of the Organization of the Petroleum Exporting Countries; or a pipeline from Portland, Maine. HEC Montréal's [Pierre-Olivier Pineau](#), who appeared before the Special Committee as an individual, claimed that a shutdown of Line 5 could restart the “virtually unused” pipeline from Portland to Montreal.

The [Canadian Chamber of Commerce](#) contended that increased train and truck traffic due to a shutdown of Line 5 would lead to higher shipping costs, greenhouse gas emissions, and congestion for Canadian and U.S. commuters. As well, the [Laborers' International Union of North America](#) suggested that greater truck congestion resulting from such a shutdown would have a “significantly detrimental” effect on at least some sectors that rely on just-in-time parts delivery, including automotive. According to the [Laborers' International Union of North America](#), some legislators in Michigan are concerned that more demand for trucks and trains to transport petroleum products could negatively affect the agricultural sector. [Canada's Minister of Natural Resources](#), [Enbridge](#), the [Canadian Chamber of Commerce](#) and the [Sarnia Construction Association](#) commented that alternative modes of transportation would not be as safe as Line 5.

[Enbridge](#) and the [Canadian Propane Association](#) thought that – in the short term – it would be difficult, if not impossible, for alternative transportation methods to ship both

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their current products and the volume of crude oil and natural gas liquids currently moved by Line 5. [Alberta's Minister of Energy](#) predicted that a shutdown of Line 5 would create a "bottleneck" of oil in "the Midwest," thereby limiting the flow of up to 400,000 barrels per day of Alberta's oil.

According to [Enbridge](#), if Line 5 shuts down, refineries in Ontario and Quebec, as well as in Indiana, Michigan, Ohio and Pennsylvania, would be unable to obtain the volumes of crude oil and natural gas liquids that they need. Consequently, Enbridge asserted that a shutdown would lead to gasoline, diesel, jet fuel, propane and butane shortages in those provinces and states. Both [Canada's Minister of Natural Resources](#) and the [Canadian American Business Council](#) maintained that a shutdown would cause a propane shortage of more than 750,000 gallons per day in Michigan.

The [Canadian Propane Association](#) underlined that a "prolonged" shutdown of Line 5 would have "severe and lasting consequences" for the supply of propane to Ontario, Quebec and Atlantic Canada. As well, the [Canadian Propane Association](#) remarked that 25% and 45% of propane that is "marketed" in Ontario and Quebec, respectively, is used by hospitals, schools and firms. The [Canadian Propane Association](#) concluded that, if a shutdown occurs, "facilities" in rural areas of Eastern Canada might encounter "great difficulties."

[Canada's Building Trades Unions](#) said that a shutdown of Line 5 would increase the price of gas, propane and petrochemical products that are used in manufacturing, and [Enbridge](#) estimated that the price of propane would rise by 38 cents per gallon in Michigan. In the view of [Local 663](#) of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, fuel costs could potentially triple. [Alberta's Minister of Energy](#) claimed that, due to the expected "bottleneck" of oil in the Midwest, the shutdown would put downward pressure on the price that Alberta's oil producers would receive for their sales of that commodity.

In the opinion of [Canada's Minister of Natural Resources](#), thousands of jobs "on both sides of the border" depend on Line 5. [Canada's Minister of Natural Resources](#), [Ontario's Associate Minister of Energy](#), the [Canadian Chamber of Commerce](#) and the [Laborers' International Union of North America](#) observed that Line 5 directly or indirectly supports more than 20,000 jobs in Sarnia.

[Canada's Building Trades Unions](#) believed that Line 5's shutdown could potentially cause 25,000 job losses, and the [Explorers and Producers Association of Canada](#) noted "significant negative consequences" for U.S. jobs. From a sectoral perspective, the [Laborers' International Union of North America](#) stated that the shutdown could affect



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jobs in such sectors as automobiles, cosmetics and medical supplies, and [Local 663](#) of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada mentioned – including in relation to certain small businesses – job losses and the closure of operations in such sectors as oil and gas, electronics, automobile manufacturing, agriculture, cosmetics, sporting goods, pharmaceuticals and medical supplies.

While witnesses did not identify any study of the number of jobs that would be affected in each province due to a shutdown of Line 5, the [Laborers' International Union of North America](#) indicated that job losses would occur in Alberta, Ontario and Quebec, as well as in Michigan, Ohio, Pennsylvania and Wisconsin. Moreover, [Canada's Minister of Natural Resources](#) described Line 5 as a “lifeline” for Quebec’s petrochemical sector, including two refineries in that province, as well as refineries in Ohio. According to [Enbridge](#), it does not have an estimate of the number of jobs that would be lost in sectors in Quebec that would be affected by a shutdown.

In pointing out that energy integration and “critical trading relationships” are “important for jobs and economies on both sides of the [Canada–U.S.] border,” [Alberta's Minister of Energy](#) asserted that a shutdown of Line 5 would “threaten” the province’s relationship with Michigan, and perhaps other U.S. states. According to [Saskatchewan's Minister of Energy and Resources](#), a shutdown would “shut off” a “crucial means of keeping families working and warm, businesses and crucial sectors powered, and successful cross-border relationships thriving.” The [Mayor of Sarnia](#) contended that Michigan’s Governor has damaged the state’s relationship with Ontario and “border cities.”

GOVERNMENT OF CANADA ACTIONS CONCERNING LINE 5

Witnesses spoke about past, current and future Government of Canada actions relating to the dispute between Enbridge and Michigan concerning Line 5. Their focus was: exploring various options for action; engaging with decisionmakers and other stakeholders; and attempting to address the dispute through legal means.

[Canada's Minister of Natural Resources](#), [Canada's Ambassador to the United States](#) and [Global Affairs Canada](#) suggested that the Government of Canada is examining its options for future actions concerning Line 5, with [Canada's Minister of Natural Resources](#) stating that the Government is preparing to take whatever actions are needed to ensure that Line 5 remains in operation. [Ontario's Associate Minister of Energy](#) urged the Government “to keep all options on the table,” while [Canada's Building Trades Unions](#) thought that the Government and all elected officials should do everything in their

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power to prevent a shutdown. Similarly, the [Explorers and Producers Association of Canada](#) commented that the Government should “prevent a stoppage.”

Regarding engagement with decisionmakers and other stakeholders, [Canada's Minister of Natural Resources](#) recalled discussing Line 5 during a meeting with the U.S. Secretary of Energy, while [Canada's Ambassador to the United States](#) remarked that Canada's Prime Minister raised the issue of Line 5 with the U.S. President and the U.S. Secretary of State, and mentioned her conversations with Michigan's current and immediate past Governors.

The [Canadian Chamber of Commerce](#) called for the Government of Canada to continue its engagement with the Biden administration with a view to finding a “swift and amicable resolution” to the Enbridge–Michigan dispute. [Local 663](#) of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada proposed that Canada's Prime Minister should “deal directly” with the U.S. President on the topic of Line 5, and the [Sarnia Construction Association](#) underlined that the Prime Minister should “stress the urgency” of the potential shutdown of Line 5 in conversations with both the President and Michigan's Governor. According to [Enbridge](#), relevant Canadian governments should encourage U.S. federal and state governments to recognize that Line 5 is a “very important” binational issue, that various Canadian provinces and U.S. states rely on the pipeline for energy, and that a “diplomatic solution” is needed.

[Global Affairs Canada](#) indicated that the Government of Canada is working with Enbridge to engage with Michigan and other U.S. states that have “a vested interest in Line 5.” [Canada's Ambassador to the United States](#), [Global Affairs Canada](#) and [Natural Resources Canada](#) commented on their interactions with provincial governments regarding Line 5, with [Natural Resources Canada](#) adding that it was not aware of any direct engagement the department might have had with Indigenous communities.

[Ontario's Associate Minister of Energy](#), [Enbridge](#) and the [Canadian Chamber of Commerce](#) advocated maintaining the “Team Canada” approach – a coordinated effort among the Government of Canada, relevant provinces and other stakeholders – as actions are taken to support continued operation of Line 5. [Ontario's Associate Minister of Energy](#) stated that Government of Ontario officials are working with Natural Resources Canada and the energy ministries of Alberta, Quebec and Saskatchewan.

Finally, concerning resolution of the dispute about Line 5 through legal means, [Enbridge](#) and the [Canadian Chamber of Commerce](#) urged the Government of Canada to support Enbridge's legal assertion – currently the subject of litigation in the United States – that the safety of Line 5 is solely a matter of U.S. federal jurisdiction. [Alberta's Minister of](#)



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Energy and Ontario's Associate Minister of Energy spoke about the potential for the Government to participate in U.S. court proceedings about Line 5 by submitting an *amicus curiae* brief and, along with Saskatchewan's Minister of Energy and Resources, noted collaboration with the Government in this regard.

Global Affairs Canada pointed out that the Government of Canada has considered invoking the 1977 *Agreement between the Government Of Canada and the Government of the United States Of America Concerning Transit Pipelines* (1977 Transit Pipelines Treaty) in an attempt to resolve the dispute about Line 5. Alberta's Minister of Energy, Ontario's Associate Minister of Energy, Enbridge, the Canadian Chamber of Commerce and Canada's Building Trades Unions, as well as Local 663 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, commented on the Government possibly invoking the treaty, with the Canadian Chamber of Commerce noting that the treaty could be used if the dispute cannot be resolved "amicably" or through "diplomatic channels outside of court." Similarly, Alberta's Minister of Energy believed that the treaty should be invoked if "diplomacy or results in litigation" do not end the dispute.

In commenting on the politicization of matters relating to Line 5, Mr. Pineau contended that decisions about pipelines and energy infrastructure should be made independently by regulatory agencies. In Mr. Pineau's view, these decisions should be based on long-term planning in relation to U.S. and Canadian energy needs, among other considerations.

CONCLUSION AND RECOMMENDATIONS

Line 5 is a significant aspect of Canada's economic relationship with the United States and contributes to secure energy supplies in both countries. Its shutdown could have many implications, including reduced safety, shortages of various energy products on both sides of the Canada–U.S border, transportation bottlenecks for Alberta's crude oil, and job losses for Canadian and American workers. In this context, the Special Committee believes that the Government of Canada's efforts designed to ensure that Line 5 remains in operation are vital.

The dispute between Enbridge and Michigan regarding the operation of Line 5 could potentially be resolved through negotiation or mediation, litigation, intervention by the U.S. federal government and/or the expeditious completion of the Great Lakes Tunnel Project. In the Special Committee's view, any resolution should be both timely and enduring, and ideally would involve a negotiated or mediated settlement between Enbridge and Michigan.

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To date, the Government of Canada's efforts to support the continued operation of Line 5 have included direct engagement with numerous high-level U.S. decisionmakers, including the U.S. President and certain members of his cabinet, as well as Michigan's Governor. Additional engagement could facilitate a resolution to the dispute between Enbridge and Michigan if it leads to a common understanding about the significance of Line 5 and the potential effects of the pipeline's shutdown. From that perspective, the Special Committee feels that continued engagement between the Governments of Canada and the United States is critically important to the continued operation of Line 5. However, effective bilateral engagement need not be limited to the executive branch. Canadian legislators can support Line 5 through direct engagement with their U.S. counterparts.

In addition, with a view to supporting Line 5, the Government of Canada has been engaging with a variety of Canadian stakeholders, including Enbridge and provincial governments. The Special Committee supports such a "Team Canada" approach and believes it should include consideration of all relevant perspectives – including those of Indigenous Peoples – as decisions are made and actions are taken. As well, domestic engagement could involve helping sectors that rely on Line 5 to develop contingency plans that would be activated if the pipeline is shut down.

The Government of Canada may take legal action aimed at ensuring the continued operation of Line 5. If Enbridge and Michigan are unable to resolve the dispute between them, the Special Committee believes that invoking the 1977 Transit Pipelines Treaty or the provisions of any other relevant international agreement, as well as filing an *amicus curiae* brief in the U.S. federal court litigation, could assist in resolving the dispute.

Ideally, Line 5 and other elements of Canada–U.S. energy infrastructure and supply chains will continue to operate without interruption. From the Special Committee's perspective, the importance of this infrastructure and these supply chains highlights a need for the Government of Canada to understand all risks that could affect their viability. This understanding could help the Government to limit adverse effects for Canada, and thereby contribute to a productive and reliable energy relationship with the United States.

In light of the foregoing, the Special Committee recommends:

Recommendation 1

That the Government of Canada encourage Enbridge Inc. and the State of Michigan to resolve the dispute between them concerning the Line 5 pipeline through a negotiated or mediated settlement. The Government should convey to relevant parties that such a

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